

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO. 347 OF 2006

Salgaocar Mining Industries
Limited, a Company incorporated
under the Companies Act, 1956
and having their registered office
at Salgaocar Chambers, Margao,
Goa.

... Applicant

versus

1. Board of Trustees of the Port
of Mormugao, a body corporate
constituted under the Major
Port Trust Act, 1963 and
having its office at Mormugao
Harbour, Goa-403 802.
2. V. M. Salgaocar & Brothers Ltd.,
a Company incorporated under
the Companies Act, 1956 and
having its Registered Office at
Salgaocar House, Francisco
Luis Gomes Road, P.O.Box 14,
Vasco-da-Gama, Goa.
3. E. Fernandes, Chief General
Manager, V. M. Salgaocar &
Brother Ltd., Salgaocar House,
Francisco Luis Gomes Road,
Vasco-da-Gama, Goa.

... Respondents

Mr. M. S. Sonak, Advocate for the Applicant.

Mr. V. B. Nadkarni, Senior Advocate with Mr. Y. V. Nadkarni,
Advocate for the Respondents.

**CORAM : SMT. RANJANA DESAI &
N. A. BRITTO, JJ.**

DATE : 10TH JULY, 2006.

ORDER(Per N. A. BRITTO, J.)

The applicant is before this Court for the tenth time, if not more, to seek extension of time to remove the wreckage of "M. V. Sanjeevani" which was grounded at Mormugao Harbour on 11-7-1993.

2. We have heard the learned Counsel and Senior Counsel on behalf of the parties, respectively. The applicant on or about 15-1-1996 filed an undertaking in the form of an affidavit signed by its Chief General Manager undertaking to remove the said wreckage by 30-4-1997. That time was extended by another year in C.M.A. No.196/1999 and again by Order dated 24-6-1997 till the end of December, 1997 and that was upon another undertaking dated 1-7-1997 that all

efforts would be made to remove the wreckage on or before 31-12-1997. A further extension was sought by application dated 5-1-1998 that the wreckage would be removed by 15-5-1998 but that application was not pursued. Another application was filed on 3-7-1998 for the withdrawal of the last mentioned application but that too was not pursued. By another application dated 16-7-1998 extension was sought to complete the work by end of May, 1999, but, this Court vide Order dated 13-8-1998 directed a notice to be issued to the applicant to show cause why the applicant should not be punished for contempt. That notice came to be dropped by Order dated 22-2-1999 and last and final extension was granted to the applicant till the end of May, 1999 and compliance report was required to be filed by 10-6-1999. By another application extension was sought to remove the wreckage by 15-5-2000 but that application came to be dismissed by Order dated 10-7-2000, as infructuous. It appears that on 10-7-2000 a representation was made to this Court that a fresh application would be filed for extension of time but no such application came to be filed.

3. The above facts are conspicuously absent in the present application dated 19-5-2006.

4. Thereafter, the respondent on or about 17-12-2001 moved an application for directions to the applicant to remove the wreckage within such time as may be fixed by the Court and, a Division Bench of this Court disposed of the same, vide Order dated 17-12-2003 and, in that Order, the learned Division Bench observed that it appeared there was no sufficient, much less satisfactory explanation offered by the applicant for the failure to remove the wreck within the extended period, given in the past. This Court observed that the applicant had taken casual attitude and did not complete the work within the specified period granted from time to time, by this Court but, by way of indulgence, in view of the affidavit filed by the applicant Managing Director, which was in the nature of an undertaking and also in view of the oral submissions made through the learned Counsel on behalf of the applicant, one more indulgence was required to be given as a last opportunity to the applicant to complete the removal of the wreck by 30-6-2004. The Division Bench accepted the undertaking and made it clear that no

further request for extension would be entertained at the instance of the applicant. The Division Bench also required the applicant to furnish a Performance Bank Guarantee of Rs.25,00,000/- as stated in the affidavit, to be furnished within four weeks and further made it clear to the applicant that in case he failed to complete the work of wreck removal before 30-6-2004, the respondent would take over the removal work and invoke the Performance Guarantee given by the applicant in terms of that Order and in the event the estimated costs of the balance work exceeded the said sum of Rs.25,00,000/-, the respondent was required to call upon the applicant to forthwith deposit that amount and that demand was to be made on or before 15-7-2004 and upon such communication being received by the applicant from the respondent, the applicant was required to deposit the amount so demanded within two weeks from the receipt of the communication. The respondent was required to invoke the Bank Guarantee in the first week of July, 2004 in the event the respondent was satisfied that the applicant had not completed the work of removal of wreckage by 30-6-2004.

5. By consent, the above Order dated 17-12-2003 was modified by Order dated 8-3-2004 of this Court. The date 30-6-2004 was to be read as 30-6-2005 and the date 15-7-2004 was to be read as 15-7-2005 and August, 2004 which appeared in Clause III was to be read as August, 2005.

6. Again, by consent of parties and by Order dated 19-7-2005 this Court was pleased to extend the work of the removal of wreckage till 31-1-2006. Again, by consent the time was extended to 31-5-2006.

7. Now, it is the case of the applicant that when the Order dated 31-1-2006 came to be passed, the wreckage of about 800 tons was lying submerged and the applicant expected that the work of removal would be completed by 31-5-2006. It is stated that 90% of the wreckage has been removed by the applicant and in the course of the removal one of the contractors met with a fatal accident at the site and despite best efforts the applicant has been able to remove approximately about 400 tons of wreckage and at present the balance left is about 100 to 200 tons of scrap along with main engine weighing about 200 to 250

tons. The applicant has stated that the applicant has acquired a A-frame barge mounted crane having the lifting capacity of 350 tons from Singapore which was to arrive by March, 2006 but did not arrive due to paper work, technical problems and bad weather and in fact it got stuck at Andaman Island and has to undergo repairs at the dry dockyard at Colombo and due to the non arrival of the said A-frame barge mounted crane the contractors had to cut the pieces of the wreckage in smaller pieces of about 15 to 20 tons which were lifted by another barge mounted crane having smaller capacity and that the said A-frame barge mounted crane arrived at the site on 5-5-2006 and has successfully lifted a huge piece weighing about 200 tons and at present about 400 tons of wreckage is lying submerged and the same could be removed by 31-5-2006 only if the fair weather continued but since the weather was drastically changing due to forthcoming monsoons the applicant by way of abundant caution has filed the application for extension of time from 31-5-2006 to 30-11-2006. The applicant has stated that the applicant is agreeable to extend the validity of the Performance Bank Guarantee upto 31-12-2006.

8. On the other hand, it has been stated by the respondent that inspite of Order dated 17-12-2003 of this Court, the applicant till date has not removed the entire wreck, which clearly demonstrates the casual attitude of the applicant in complying with the orders of this Court and that the respondent apprehends that the wreck may cause impediment to the safe navigation of other vessels calling at the Port and may also block the navigational channel which may cause impediment to enter and go out of the Port and as such the said wreckage cannot continue indefinitely at the site and the respondent is now more than satisfied that no serious attempts are being made by the applicant for the removal of the wreckage. The respondent has stated that as the applicant did not complete the work of removal of wreck by 31-5-2006 a decision has been taken to encash the Bank Guarantee and call upon the applicant to deposit the additional estimated cost and as such the respondent proposes to encash the said Bank Guarantee of Rs.25,00,000/- and call upon the applicant to deposit an amount of Rs.2,00,00,000/- which is the balance estimated cost for undertaking the remaining salvage work. The respondent has stated that the underwater inspection of the remaining portion

of the wreck cannot be carried out till the southwest monsoon is over and the weather conditions are not conducive for the inspection and the estimation of work involved can be made only after a thorough inspection is done inasmuch as the size of the submerged portion of the wreck is also not known as most of the wreck is covered with silt to make a fair assessment. The respondent has given a rough estimate of the balance cost of the removal of the wreck at Rs.2.25 crores and have stated that an accurate estimate could be made only after a thorough inspection of the wreck is done by inviting quotations from competent salvage firms after the southwest monsoon is over. The respondent has objected for the extension of time.

9. In the affidavit in rejoinder filed on behalf of the applicant a grievance was made that the respondent had done nothing for the removal of the wreck of Maratha Transhipper which was lying above the low tide water at the mouth of the navigational channel but the respondent was putting up a marathon opposition as regards the removal of remaining 10% of the wreck of "M.V.Sanjeevani". On behalf of the respondent a copy of the letter dated 19-3-2005 was produced and the same

shows that M/s. Kanishka Salvage and Underwater Services Pvt. Ltd. have removed the wreck of "M.V.Maratha Transhipper" and thereby have adequately removed the obstruction for safe navigation of all vessels, etc. We quite see that the respondent has been more than kind to the applicant, as noticed hereinabove.

10. Admittedly, it is now almost 13 years that the Transhipper "M. V. Sanjeevani" was grounded on 11-7-1993 and it is over 9 years that the applicant gave an undertaking to this Court that the wreck would be removed by 30-4-1997 and till date the history has been one of the applicant seeking extension after extension and the work of removal remaining incomplete. We have already noted that on 17-12-2003 it was made clear that no further extension would be granted. Does the applicant still deserve another indulgence?

11. The applicant has not mentioned as to when the contractor died, during which extension. The applicant has also not mentioned in the application as to when an order was placed for A-frame barge crane, which is stated to have arrived at the

site on 5-5-2006, and, if its capacity was to lift 350 tons as to why it could not lift about 100 to 200 tons of scrap and the engine weighing about 200 to 250 tons before the application was filed on 19-5-2006. It appears to us that the applicant has never been serious in trying to remove the entire wreckage of the said Transhipper and this was also noted by the earlier Division Bench of this Court on 17-12-2003 when the Division Bench observed that the attitude of the applicant was casual and yet indulgence was shown and time was granted as a last opportunity by 30-6-2004.

12. Although, the applicant has not at all been serious in complying with the undertakings given by him before this Court from time to time, reluctantly we are inclined to give a last and final opportunity to the applicant to remove the wreck positively by 30-11-2006 with a clear understanding that under no circumstances the time would be extended and by imposing the following conditions:-

1. The applicant shall furnish an assurance/undertaking by way of an affidavit that the work of the removal of the wreck of M. V. Sanjeevani shall be completed in all respects by 30-11-2006.
2. The applicant shall furnish a fresh Performance Bank Guarantee for the sum of Rs.1.5 crores by 31st instant. On furnishing of the said Performance Bank Guarantee, the respondent-M.P.T. shall return to the applicant the earlier Bank Guarantee. The respondent-Port Trust will be at liberty to invoke the Bank Guarantee being furnished in the sum of Rs.1.5 crores by 15-12-2006, in the event the respondent-M.P.T. is not satisfied that the applicant has not completed the work in all respects of the removal of the wreckage by 30-11-2006 in terms of this order. In case the respondent-M.P.T. is of the view that the estimated costs for undertaking the remaining salvage work would exceed Rs.1.5 crores it shall call upon the applicant to deposit such amount on or before 31-12-2006 and the applicant shall deposit such amount with the respondent-M.P.T. within two weeks from the receipt of such communication and thereafter

the respondent-M.P.T. shall complete the remaining work as expeditiously as possible. The fresh Bank Guarantee to be kept alive till 31-3-2007.

SMT. RANJANA DESAI, J.

N. A. BRITTO, J.

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